

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 175 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

2 to 5: No

AHMEDABAD KAISER I HIND MILLS COMPANY LIMITED

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR MANISH J. SHAH for MR JP SHAH for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 24/12/98

ORAL JUDGEMENT (per R. Balia, J.)

Two questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal Bench 'A' at the instance of the assessee which arise out of tribunal's order in ITA No. 1050/Ahd/82 for A.Y.

1977-78.

Qn. No. 1: Whether on the facts the appellate tribunal was right in law in holding that expenditure incurred on account of exchange rate variation was of capital nature and not deductible in computation of total income?"

2. This question, whether the expenditure incurred on account of fluctuation in rate of exchange is of capital nature or of revenue has been answered by this court in New India Industries Ltd. v. CIT, 203 ITR 933, and in the case of New India Industries Ltd. v. CIT, 207 ITR 1010, by holding it to be of capital nature not deductible in computation of total income.

3. Following aforesaid decision, we answer question No. 1 in affirmative, that is to say, in favour of revenue and against the assessee.

Qn. No. 2: "Whether on the facts the appellate tribunal was right in law in holding that interest paid u/s 217(1A) of the I.T. Act, 1961 was not business revenue expenditure and not deductible in computation of total income particularly when such interest charged was waived and refunded in subsequent years?"

4. The question is directly related to the issue whether any interest paid for delayed payment of tax or default in payment of tax can be said to be an expense incurred wholly or exclusively for the purpose of carrying on business. Obviously, the act of delay in payment of any direct tax, when it becomes due and payable, cannot be attributed to any business activity. We need not elaborate on the issue. In Saurashtra Cement and Chemical Industries Ltd. v. CIT, 213 ITR 523, this court disallowed the claim of the assessee that interest payable u/s 220 is deductible by holding that if the preliminary liability to be discharged by the assessee is not allowable as expenses laid out or incurred for the purpose of business, ordinarily the interest paid thereon also cannot be considered as expenses laid out or incurred wholly for the purpose of the business.

5. In coming to this conclusion, the court relied on the following observation of the Supreme Court in Padmavati Jaykrishna v. CIT, (1975) 101 ITR 153 made while disallowing the claim for deduction of interest on

the amounts borrowed to pay taxes and annuity deposits,

"We are inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned, it was indeed a personal one and payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income."

6. The principle fully governs the payment of interest u/s 217(1A) which fastens liability to pay interest on the assessee in default specified in the clause relating to payment of advance tax.

7. Rajasthan High Court too has held in CIT v. Mewar Oil & General Mills, 127 CTR 244, that interest liability u/s 217(1A) is not deductible expenses.

8. Accordingly, we answer question No. 2 also in affirmative, that is to say, in favour of revenue and against the assessee.

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